

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>DR. MARKCUS KITCHENS, JR.</b>	:	: <b>CIVIL ACTION</b>
	:	
v.	:	: <b>NO. 22-3301</b>
	:	
<b>UNITED STATES MEDICAL</b>	:	
<b>LICENSING EXAMINATION</b>	:	

**ORDER**

**AND NOW**, this 9<sup>th</sup> day of May 2023, upon considering plaintiff's motion to compel discovery (DI 52), defendant's response (DI 58), it is **ORDERED** plaintiff's motion to compel discovery (DI 52) is **DENIED**:

1. We are guided by Fed R. Civ. P. 26(b)(1): "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit."

2. Dr. Kitchens argues that NBME failed to produce a privilege log, but the deficiencies alleged by Dr. Kitchens do not relate to documents withheld for privilege. Therefore, no privilege log was required.

3. For the most part, Dr. Kitchens seeks discovery that goes far beyond what will be useful for determining the contested issues at trial. Relevance is not the only concern under Rule 26(b)(1), but where the potential benefit to the case is essentially zero, the burden of collecting and producing the discovery is not justified.

4. **Interrogatory No. 3 and RFP No. 1 (expungement policy).** NBME has

responded adequately to these requests and there is no indication that responsive information is being withheld.

5. **Interrogatory Nos. 4 and 5 and RFP No. 5 (policies, procedures, etc.).**

NBME has agreed to provide Dr. Kitchens with a copy of the “Orientation to DS processing/flowchart,” but setting that aside, any potentially responsive documents do not appear to be sufficiently relevant to justify the burden in searching for and producing them.

6. **RFP No. 8 (evaluation records).** NBME has responded adequately to these requests and there is no indication that responsive information is being withheld.

7. **Interrogatory Nos. 9 and 10 and RFP Nos. 1 and 2 (scoring system).** Any further potentially responsive documents do not appear to be sufficiently relevant to justify the burden in searching for and producing them.

8. **Interrogatory No. 11 and RFP Nos. 1 and 2 (score validity and reviewers).** NBME has responded adequately to these requests and any further potentially responsive documents do not appear to be sufficiently relevant to justify the burden in searching for and producing them.

9. **RFP Nos. 16-21 (prior examinations).** Any further potentially responsive documents do not appear to be sufficiently relevant to justify the burden in searching for and producing them.

  
MURPHY, J.